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Supreme Court of the United States

OCTOBER TERM

No. 436

PAULETTE BOUDREAU RODRIGUE, ET AL

and

ELLA MAE DUBOIS DOKE, INDIVIDUALLY, ETC.

Petitioners.

VERSUS

AETNA CASUALTY AND SURETY COMPANY, ET AL.

and

THE LINK BELT COMPANY, ET AL.

Respondents.

**SPECIAL BRIEF ON BEHALF OF AETNA CASUALTY &
SURETY COMPANY, ET AL. AND LINK BELT COMPANY, ET AL.
RESPONDENTS.**

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LINK BELT COMPANY, ET AL, RESPONDENTS

MAY IT PLEASE THE COURT:

In answer to this Honorable Court's question of whether or not the Death on the High Seas Act applies to these type of cases in light of the cases limiting admiralty jurisdiction and the Outer Continental Lands Act language and history, we answer this question in the affirmative. We definitely feel that there is admiralty jurisdiction and that the Congress in enacting the Outer Continental Shelf Lands Act in no way in-

tended to limit or replace the Death on the High Seas Act.

ADMIRALTY JURISDICTION OVER FIXED PLATFORMS IN THE OUTER CONTINENTAL SHELF LANDS AREA

There can be no doubt that Congress, when it enacted the Outer Continental Shelf Lands Act intended to preserve and reserve the Federal Maritime Law to this area. See 1953 U. S. Cong. & Adm. News, pp. 1391 and 1461. Congress specifically set forth their intention in 43 U. S. C. §1332 (B) where it stated:

"This subchapter shall be construed in such a manner that the character as high seas of the waters above the Outer Continental Shelf and the right to navigation and fishing therein shall not be affected."

Thus, we can see that Congress intended that these waters beneath these fixed platforms continue to be classified as part of the high seas.

We respectfully submit that the nature of the work together with the fact that this work is performed over navigable waters by these oil workers is a topic of such national importance that these activities should be governed by one uniform system of laws, which should not be subject to shifting policies of state legislatures.

The fact that one of these deaths occurred aboard the platform, while the other did not, we feel is of no real importance. The factors which we would like

to point out to the Court, which show that these structures should be regulated by Federal Maritime Law are as follows: These platforms are regulated and inspected by the Coast Guard, they are aids to navigation, the men working aboard these platforms face the same risks and dangers that seamen encounter.

The Coast Guard has been given authority to promulgate and enforce reasonable regulations with respect to the lighting, warning devices, safety equipment and other matters relating to the safety and property on these fixed structures. The Coast Guard regulates these structures in much the same way as it does a vessel. See 33 C. F. R. §140 et seq. pp. 538-549.

Many of the Gulf Coast fishermen navigate the Coastal Waters solely by reference to these rigs either by visually sighting the rigs by the day or locating their signal lights at night.

In regards to the hazards of these platform workers, as the Court pointed out in *Pure Oil v. Snipes*, 293 Fed. 2d 60, (5 Cir., 1961), these workers risk the same hazard of falling into navigable waters and drowning, that seamen encounter.

There are numerous authorities to the effect that it is immaterial whether or not a tort is committed aboard a vessel, if the tort is in fact committed upon the high seas or navigable waters. One of the first cases laying down this test, was set forth in the *Plymouth*, 1866, 3 Wall. 20, 70 U.S. 20, 18 L.Ed. 125, where the Court said in part:

"It is admitted by all the authorities that the jurisdiction of the admiralty over maritime torts depends upon locality — the high seas or other navigable waters within admiralty cognizance. . . the jurisdiction of the admiralty over maritime torts does not depend upon the wrong having been committed on board the vessel, but upon its having been committed upon the high seas or other navigable waters."

In addition to these deaths having a maritime location, we also submit that they involve maritime wrongs. These deaths also occurred on board these platforms which were aids to navigation, and which were regulated by the Coast Guard. Their duties in fact consisted of the same duties and risks and hazards which are incurred by other "seamen."

OUTER CONTINENTAL SHELF LANDS ACT

This Honorable Court is referred to the legislative history of the Outer Continental Shelf Lands Act, particularly that section setting forth the purpose of the legislation. (1953 U. S. Cong. & Adm. News; pp. 2177-8) The sole recited purpose of the Act was

"To amend the Submerged Lands Act in order that the area in the Outer Continental Shelf beyond boundaries of the states, may be leased and developed by the government." This expressed purpose is patent from an examination of the entire act. Chapter 345 - Public Law 212, 1953 U. S. Cong. & Adm. News, p. 506.

Certainly Congress did not intend to adopt those state laws which bear no relevancy or reasonable relation to the end which it sought to achieve by the legislation. On the contrary, the legislative history suggests that Congress was concerned only with adopting the police power of the adjacent states to the extent that they were relevant to the Congressional purpose, such as laws regulating taxation, conservation and control of the manner of conducting geophysical explorations. See 1953 U. S. Cong. & Adm. News, pp. 1406-7, 1391.

It is submitted that Congress did not intend to interfere with the jealously guarded uniformity of the Admiralty Law by adopting a waterfall of state statutes totally irrelevant to its expressed legislative purpose.

Within the area of maritime personal injuries, particularly those occurring beyond the three mile demarcation line, the body of Federal Maritime Law, we respectfully submit, is paramount. In *Pure Oil Company v. Snipes*, 293 F. 2d 60, (Fifth Cir., 1961), the Court recognized the necessity for federal pre-emption of maritime personal injury law, observing that, "Congress knew from long experience of the desirability — if not the constitutional necessity — of a substantial uniformity in dealing with matters maritime. It runs counter to the whole purpose of the Act to assume that Congress meant a matter of such importance as safety of life and limb should be left to the shifting policies of adjacent states."

Following this principle, the Courts have held inapplicable the state laws of contributory negligence

to personal injury actions occurring on the Outer Continental Shelf. *Loffland Bros. Company v. Roberts*, 386 Fed. 2d 540 (Fifth Cir., 1967). The Courts have likewise held that the indemnity law of the state is also inapplicable to the Outer Continental Shelf Act, see *Ocean Drilling and Exploration Co. v. Berry Bros. Oil Field Service, Inc.*, 377 Fed. 2d 511, (Fifth Cir., 1967).

We respectfully urge that Congress did not intend that the Outer Continental Shelf Lands Act adopt, as federal law, state created rights or remedies, not relevant to its legislative and violative of the uniformity of the Admiralty Law.

These death actions relate to navigation and commerce and therefore, the rights, obligations and liabilities of the parties should be governed by the maritime law so as not to work a material prejudice to the characteristic features of General Maritime Law or interfere with its uniformity.

If this Court so decides that the Death on the High Seas Act does not apply to these fixed platform deaths, then it will be placing these oil field workers in the same position that seamen were placed prior to the enactment of the Death on the High Seas Act. Since under the maritime law there is no action for wrongful death. *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 53 S.Ct. 173, 77 S.Ct. 368 (1932).

The District Courts would be faced with a floodtide of litigation involving which state law would be ap-

plicable to a given death since the lines as required by 43 U.S.C. § 1333 paragraph 2 have not been projected outward. As a natural result there will be much confusion as to just what state law is applicable. An example of this problem exists here in Louisiana where there is a dispute between Texas and Louisiana as to how their boundaries should be projected from the mouth of the Sabine River. The confusion that the undesignated boundaries could produce is certainly apparent to this Court.

In the event that this Honorable Court should find that Federal Maritime Law and the Death on the High Seas Act does not apply to deaths occurring on fixed platforms, and that state law should be used to give a remedy, it is respectfully submitted that the entire jurisprudence of the state death acts be applied in their entirety. This Court, in *Tungus v. Skovgaard*, 358 U.S. 588, 3 L. Ed. 2d 524, 79 S. Ct. 503, (1959), stated:

"The decisions of this Court long ago established that where admiralty adopts a state right of action for wrongful death, it must inforce the right as an integrated whole, with whatever conditions and limitations the creating state has attached. That is what was decided in the *Harrisburg*, where the Court's language was unmistakable: 'If the admiralty adopts the statute as a rule of right to be administered within its own jurisdiction, it must take the right subject to the limitations which have been made a part of its existence. . . The liability and the remedy are created by the same statutes, and the limitations of the remedy are, therefore, to be treated as limitations of the right.'

119 U.S. 199, at 214. That is the doctrine which has been reiterated by the Court through the years. See the Hamilton (Old Dominion SS Co. v. Gilmore) 207 U. S. 398, 52 L. Ed. 264, 28 S. Ct. 133; and numerous other citations omitted."

CONCLUSION

In conclusion, respondents respectfully submit that the Death on the High Seas Act is the proper remedy and right of oil workers performing their duties on fixed platforms in the Outer Continental Shelf in the Gulf of Mexico or elsewhere, and that this is their sole remedy. We further submit that to allow the application of the state's Wrongful Death Statute to supplement the Death on the High Seas Act would be in direct violation of the mandates of Congress as set forth in the Outer Continental Shelf Lands Act when it stated that all laws, "which are applicable and not inconsistent." There is no doubt that a state's Wrongful Death Act allowing for additional damages is inconsistent with the Federal Death Act which specifically set forth the amount of damages to be given to these individuals.

Respectfully submitted,

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CERTIFICATE

This is to certify that I have this day mailed a copy of the above and foregoing Brief in Opposition to Petition for a Writ of Certiorari to Mr. A. Deutsche O'Neal, Mr. Philip E. Henderson, Mr. Charles J. Hanemann, Jr., P. O. Box 590, O'Neal Building, Houma, Louisiana; Mr. George Arceneaux, Jr., 311 Góode Street, Houma, Louisiana; and Mr. Alfred S. Landry, Landry, Watkins, Cousin & Bonin, 211 East Main Street, New Iberia, Louisiana.

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